

CLOSED, ECF, MAGCONSENT

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:12-cv-07432-GWG**

Bickel & Brewer v. Executive Office for United States Attorneys
Assigned to: Magistrate Judge Gabriel W. Gorenstein
Cause: 05:552 Freedom of Information Act

Date Filed: 10/04/2012
Date Terminated: 07/17/2013
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: Federal Question

Plaintiff**Bickel & Brewer**

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V.

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Date Filed	#	Docket Text
10/03/2012	<u>1</u>	COMPLAINT against Executive Office for United States Attorneys. (Filing Fee \$ 350.00, Receipt Number 1050100) Document filed by Bickel & Brewer.(mro) (Additional attachment(s) added on 10/4/2012: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit) (mro). (Entered: 10/04/2012)

10/03/2012		SUMMONS ISSUED as to Executive Office for United States Attorneys. (mro) (Entered: 10/04/2012)
10/03/2012		Magistrate Judge Gabriel W. Gorenstein is so designated. (mro) (Entered: 10/04/2012)
10/03/2012		Case Designated ECF. (mro) (Entered: 10/04/2012)
10/04/2012		***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney Alexander David Widell for noncompliance with Section 14.3 of the S.D.N.Y. Electronic Case Filing Rules & Instructions. E-MAIL the PDF for Document <u>1</u> Complaint to: caseopenings@nysd.uscourts.gov. (mro) (Entered: 10/04/2012)
10/12/2012	<u>2</u>	NOTICE OF INITIAL PRETRIAL CONFERENCE: Initial Conference set for 12/20/2012 at 03:00 PM in Courtroom 26A, 500 Pearl Street, New York, NY 10007 before Judge Jesse M. Furman as further set forth in this order. (Signed by Judge Jesse M. Furman on 10/12/2012) (lmb) (Entered: 10/12/2012)
10/16/2012	<u>3</u>	AFFIDAVIT OF SERVICE of Summons and Complaint,. Executive Office for United States Attorneys served on 10/10/2012, answer due 10/31/2012. Service was accepted by Steffon Edmonds Mail Clerk and Authorized Agent. Document filed by Bickel & Brewer. (Widell, Alexander) (Entered: 10/16/2012)
11/28/2012	<u>4</u>	AFFIDAVIT OF SERVICE of Notice of Initial Pretrial Conference served on Executive Office for United States Attorneys on October 15, 2012. Service was accepted by Steffon Edmonds Mail Clerk and Authorized Agent. Document filed by Bickel & Brewer. (Widell, Alexander) (Entered: 11/28/2012)
12/13/2012	<u>5</u>	ENDORSED LETTER addressed to Judge Jesse M. Furman from Kaleb McNeely dated 12/12/2012 re: Request to adjourn the 12/20 initial pretrial conference. ENDORSEMENT: Application GRANTED. The pretrial conference is rescheduled for January 28, 2013, at 3:15 pm in Courtroom 6A of the United States Courthouse, 500 Pearl Street, New York, NY 10007. (Initial Conference reset for 1/28/2013 at 03:15 PM in Courtroom 6A, 500 Pearl Street, New York, NY 10007 before Judge Jesse M. Furman.) (Signed by Judge Jesse M. Furman on 12/13/2012) (cd) (Entered: 12/13/2012)
01/07/2013	<u>6</u>	AFFIDAVIT OF SERVICE. Executive Office for United States Attorneys served on 12/12/2012, answer due 1/2/2013. Service was made by Mail. Document filed by Bickel & Brewer. (Widell, Alexander) (Entered: 01/07/2013)
01/10/2013	<u>7</u>	ENDORSED LETTER addressed to Judge Jesse M. Furman from Arastu K. Chaudhury dated 1/9/13 re: Counsel for the Government requests a one month extension of the time for the defendant to answer or otherwise respond to the complaint from 1/14/13 until 2/14/13. Counsel also requests an adjournment of the initial pre-trial conference currently scheduled for 1/28/13. ENDORSEMENT: Application GRANTED. The pretrial conference is rescheduled for March 1, 2013, at 2:30 pm in Courtroom 1105 of the Thurgood Marshall Courthouse, 40 Centre Street, New York, NY 10007. (Initial Pretrial Conference set for 3/1/2013 at 02:30 PM in Courtroom 1105, 40 Centre Street, New York, NY 10007 before Judge Jesse M. Furman.) (Signed by Judge Jesse M. Furman on 1/10/2013) (mro) (Entered: 01/10/2013)
02/14/2013	<u>8</u>	ANSWER to <u>1</u> Complaint,. Document filed by Executive Office for United States Attorneys.(Chaudhury, Arastu) (Entered: 02/14/2013)
02/14/2013	<u>9</u>	AMENDED ANSWER to <u>1</u> Complaint,. Document filed by Executive Office for United States Attorneys. (Chaudhury, Arastu) (Entered: 02/14/2013)
02/21/2013		NOTICE: Please be advised that the conference scheduled for 3/1/2013 will be held in Courtroom 444 of the Thurgood Marshall Courthouse, 40 Centre Street. (ab) (Entered: 02/21/2013)
02/22/2013	<u>10</u>	Letter addressed to Judge Jesse M. Furman from William A. Brewer and Arastu K. Chaudhury re: Pursuant to the Notice of Initial Pretrial Conference, dated October 12, 2012, the parties hereby submit their joint letter to the Court as follows... Document filed by Bickel & Brewer, Executive Office for United States Attorneys.(mt) (Entered: 02/22/2013)

03/01/2013	<u>11</u>	ORDER: As discussed at the conference held in this case earlier today, Plaintiff's application for limited discovery regarding Defendant's delay in processing its Freedom of Information Act request is GRANTED. Discovery shall be limited to one deposition pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, as well as limited document requests, interrogatories, and requests for admission. The parties shall confer regarding the scope of discovery and submit a letter to the Court no later than the close of business on March 5, 2013, indicating either that they have reached agreement regarding the scope of such discovery or explaining the nature of whatever disagreement exists. The next conference shall take place on April 25, 2013, at 3:30 p.m. in Courtroom 1105 of the Thurgood Marshall Courthouse, 40 Centre Street, New York, NY. Defendant's motion for summary judgment shall be filed on or before May 24, 2013. Plaintiff's opposition shall be filed on or before June 21, 2013. Defendant's reply, if any, shall be filed on or before July 8, 2013. The scope of material covered by this motion for summary judgment will be determined at the April 25, 2013 conference., (Status Conference set for 4/25/2013 at 03:30 PM in Courtroom 1105, 40 Centre Street, New York, NY 10007 before Judge Jesse M. Furman.), (Motions due by 5/24/2013., Responses due by 6/21/2013., Replies due by 7/8/2013.) (Signed by Judge Jesse M. Furman on 3/1/2013) (lmb) Modified on 3/1/2013 (lmb). (Entered: 03/01/2013)
03/01/2013		Minute Entry for proceedings held before Judge Jesse M. Furman: Initial Pretrial Conference held on 3/1/2013. Alexander Widell and Kaleb McNeely present for the Plaintiff. Arastu Chaudhury present for the Defendant. (ab) (Entered: 03/12/2013)
03/04/2013	<u>12</u>	ORDER: In addition to the matters set forth in the Court's Order of March 1, 2013, the parties shall confer regarding a proposed deadline for the limited discovery concerning Defendant's response to Plaintiff's Freedom of Information Act request, and shall include an agreed upon date, or indicate that there is a disagreement regarding the date, in the letter due by March 5, 2013. Within twenty-four hours of Computer Associates' response to Defendant's notice and, in any event, no later than April 23, 2013, the parties shall submit a joint letter to the Court explaining the substance of Computer Associates' response and what impact, if any, they believe that response has on the case going forward. No later than March 11, 2013, Defendant shall show cause in writing, in a letter brief not to exceed five pages, why it should not be ordered to return the \$58,390 paid by Plaintiff in September 2010, either with or without interest, pending the outcome of this litigation. Plaintiff's response, if any, is due no later than one week after receipt of Defendant's submission, and may not exceed five pages as well. (Signed by Judge Jesse M. Furman on 3/4/2013) (lmb) (Entered: 03/04/2013)
03/06/2013	<u>13</u>	Letter addressed to Judge Jesse M. Furman from Alexander D. Widell dated 3/6/2013 re: We are plaintiff in the above-referenced action. We write to follow up on the joint letter submitted yesterday, March 5, 2013, regarding the scope of initial discovery in the above-referenced action (the "Joint Letter"). In this regard, prior to sending the Joint Letter, Plaintiff had agreed with the Government to limit its requests for production of documents, interrogatories, and requests for admission to fifteen (15), not the twenty (20) identified in the Joint Letter. Unfortunately, that change should have been, but was not, reflected in the Joint Letter. Document filed by Bickel & Brewer.(lmb) (Entered: 03/06/2013)
03/06/2013	<u>14</u>	ENDORSED LETTER addressed to Judge Jesse M. Furman from Alexander D. Widell and Arastu K. Chaudhury dated 3/5/2013 re: In accordance with the Orders dated March 1, 2013, and March 4, 2013 (Docket # 11, 12) (the "Order"), the parties hereto have conferred upon the scope of discovery concerning Defendant's delay in processing Plaintiff Freedom of Information Act request (the "Request"), but were unable to come to an agreement. Below are the parties' respective positions as further set forth in this letter. ENDORSEMENT: The Government's proposed discovery plan is hereby adopted. (Signed by Judge Jesse M. Furman on 3/6/2013) (lmb) (Entered: 03/06/2013)
03/12/2013	<u>15</u>	Letter addressed to Judge Jesse M. Furman from Arastu K. Chaudhury and Alexander Widell dated 3/11/2013 re: counsel for Defendant writes respectfully on behalf of the parties pursuant to the Court's March 4, 2013 Order, which provided that "[w]ithin twenty-four hours of Computer Associates' response to Defendant's notice... the parties shall submit a joint letter to the Court explaining the substance

		of Computer Associates' response and what impact, if any, they believe that response has on the case going forward." Document filed by Executive Office for United States Attorneys.(pl) (Entered: 03/12/2013)
03/12/2013	<u>16</u>	ENDORSED LETTER addressed to Judge Jesse M. Furman from Arastu K. Chaudhury dated 3/11/2013 re: counsel for Defendant writes that Pursuant to the Court's March 4, 2013 Order (Docket #12), requiring the Government, inter alia, to show cause why it should not refund the anticipated duplication costs (the "Costs") related to Plaintiffs FOIA request that Plaintiff paid Defendant in September 2010 (the "Order To Show Cause"), I write to inform the Court that on March 7, 2013, the Defendant submitted a request for refund of the Costs (the "Refund Request"). A copy of the Refund Request is attached to this letter as Exhibit A. The Government respectfully submits that the Refund Request renders moot the issues raised in the Order To Show Cause. Plaintiff agrees that the Refund Request renders those issues moot. ENDORSEMENT: The Court agrees that this renders the issues raised in the Order to Show Cause moot. (Signed by Judge Jesse M. Furman on 3/12/2013) (pl) (Entered: 03/12/2013)
04/15/2013	<u>17</u>	NOTICE OF APPEARANCE by Kaleb McNeely on behalf of Bickel & Brewer (McNeely, Kaleb) (Entered: 04/15/2013)
04/25/2013		Minute Entry for proceedings held before Judge Jesse M. Furman: Pretrial Conference held on 4/25/2013. Kaleb McNeely present for the Plaintiff. Arastu Chaudhury present for the Defendant. Court reporter present. (ab) (Entered: 04/30/2013)
04/26/2013	<u>18</u>	ORDER FOLLOWING PRETRIAL CONFERENCE: As a result of a Pretrial Conference held before the Court yesterday, the following is ORDERED: 1. The May 24, 2013 deadline for submission of motions for summary judgment is VACATED. 2. The next Pretrial Conference will be held on May 23, 2013, at 2:30 p.m. Any conference scheduled for a date prior thereto is cancelled. 3. On May 16, 2013, the parties are directed to submit a joint status letter apprising the Court of the status of the case. 4. No later than April 30, 2013, the parties shall contact the chambers of Magistrate Judge Gabriel W. Gorenstein to schedule a settlement conference during the week of May 20, 2013, prior the conference with the Court on May 23, 2013, for purposes of resolving the case or narrowing any dispute for summary judgment as further set forth in this order., (Pretrial Conference set for 5/23/2013 at 02:30 PM before Judge Jesse M. Furman.) (Signed by Judge Jesse M. Furman on 4/26/2013) (lmb) (Entered: 04/26/2013)
04/26/2013	<u>19</u>	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for Settlement. Referred to Magistrate Judge Gabriel W. Gorenstein. ENDORSEMENT: The parties are directed to seek a conference with Judge Gorenstein early in the week of May 20th, assuming Judge Gorenstein's schedule permits. (Signed by Judge Jesse M. Furman on 4/26/2013) (lmb) (Entered: 04/26/2013)
04/30/2013	<u>20</u>	ORDER SCHEDULING SETTLEMENT CONFERENCE: A settlement conference in this matter is scheduled for May 21, 2013 at 3:00 p.m. in Courtroom 17-A, United States Courthouse, 500 Pearl Street, New York, New York. All persons attending the conference should arrive early to allow for the time required to pass through the security clearance process. (Settlement Conference set for 5/21/2013 at 03:00 PM in Courtroom 17A, 500 Pearl Street, New York, NY 10007 before Magistrate Judge Gabriel W. Gorenstein.) (Signed by Magistrate Judge Gabriel W. Gorenstein on 4/30/2013) (js) Modified on 4/30/2013 (js). (Entered: 04/30/2013)
05/16/2013	<u>21</u>	TRANSCRIPT of Proceedings re: CONFERENCE held on 4/25/2013 before Judge Jesse M. Furman. Court Reporter/Transcriber: Jerry Harrison, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/10/2013. Redacted Transcript Deadline set for 6/20/2013. Release of Transcript Restriction set for 8/19/2013.(Rodriguez, Somari) (Entered: 05/16/2013)

05/16/2013	<u>22</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 4/25/13 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(Rodriguez, Somari) (Entered: 05/16/2013)
05/17/2013	<u>23</u>	ENDORSED LETTER addressed to Judge Jesse M. Furman from Kaleb McNeely and Arastu K. Chaudhury dated 5/16/2013 re: In accordance with the Order Following Pretrial Conference, dated April 26, 2013 (Docket No. 18), the parties hereby submit their joint status letter apprising the Court of the status of the case. ENDORSEMENT: The Court will address all open issues at the May 23rd conference. (Signed by Judge Jesse M. Furman on 5/17/2013) (lmb) (Entered: 05/17/2013)
05/21/2013	<u>28</u>	Minute Entry for proceedings held before Magistrate Judge Gabriel W. Gorenstein: Settlement Conference held on 5/21/2013. (dj) (Entered: 05/24/2013)
05/22/2013	<u>24</u>	TRANSCRIPT of Proceedings re: CONFERENCE held on 4/25/2013 before Judge Jesse M. Furman. Court Reporter/Transcriber: Jerry Harrison, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/17/2013. Redacted Transcript Deadline set for 6/27/2013. Release of Transcript Restriction set for 8/23/2013.(McGuirk, Kelly) (Entered: 05/22/2013)
05/22/2013	<u>25</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 4/15/2013 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 05/22/2013)
05/23/2013	<u>26</u>	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for Consent under 28 U.S.C. 636(c) for all purposes (including trial). Referred to Magistrate Judge Gabriel W. Gorenstein. (Signed by Judge Jesse M. Furman on 5/23/2013) (ab) (Entered: 05/23/2013)
05/23/2013	<u>27</u>	CONSENT TO JURISDICTION BY A US MAGISTRATE JUDGE by Bickel & Brewer, Executive Office for United States Attorneys. (Case No Longer Referred to Magistrate Judge) CASE ASSIGNED to Magistrate Judge Gabriel W. Gorenstein. (Signed by Judge Jesse M. Furman on 5/23/2013) (ab) (Entered: 05/23/2013)
05/29/2013	<u>29</u>	SCHEDULING ORDER: IT IS HEREBY ORDERED that: 1. Plaintiff's Fee Category Motion shall be filed on or before June 21, 2013. Defendant's opposition shall be filed on or before July 19, 2013. Plaintiff's reply, if any, shall be filed on or before August 2, 2013. 2. Defendant's Motion for Summary Judgment shall be filed on or before June 27, 2013. Plaintiff's opposition shall be filed on or before July 25, 2013. Defendant's reply, if any, shall be filed on or before August 8, 2013. Motions due by 6/27/2013. Responses due by 7/25/2013. Replies due by 8/8/2013. (Signed by Magistrate Judge Gabriel W. Gorenstein on 5/29/2013) (lmb) (Entered: 05/29/2013)
05/29/2013	<u>30</u>	STIPULATION AND ORDER REGARDING THE SCOPE OF SUMMARY JUDGMENT: IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and Defendant, as follows: 1. Plaintiff will not contest Defendant's withholding of grand jury materials pursuant to 5 U.S.C. § 552(b)(3) and Federal Rule of Criminal Procedure 6(e), except that this exclusion does not extend to those documents responsive to the Plaintiff's FOIA Request that were produced pursuant to grand jury subpoenas. 2. Plaintiff will not contest Defendant's redaction of personal identifying information pursuant to 5 U.S.C. § 552(b)(6) and (7)(C) from documents that Defendant has agreed to produce. 3. The parties understand and agree that this Stipulation and Order contains the entire agreement between them,

		and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect. 4. Facsimile or electronic signatures shall have the same force and effect as original signatures. (Signed by Magistrate Judge Gabriel W. Gorenstein on 5/29/2013) (lmb) (Entered: 05/29/2013)
06/20/2013	<u>31</u>	STIPULATION AND ORDER STAYING ACTION AND VACATING BRIEFING DEADLINES: IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and Defendant, as follows: 1. This case is stayed until such time as Plaintiff informs Defendant and the Court that Plaintiff intends to proceed with this action. 2. All briefing schedules, including, but not limited to, the briefing schedules for (i) the Fee Category Motion and (ii) the Motion for Summary Judgment are vacated until such time as Plaintiff informs Defendant that Plaintiff intends to proceed with this action. In the event that Plaintiff determines that it will proceed with this action, the parties will work cooperatively to agree upon briefing schedules for (i) the Fee Category Motion and (ii) the Motion for Summary Judgment. 3. Facsimile and/or electronic signatures are deemed originals. (Signed by Magistrate Judge Gabriel W. Gorenstein on 6/20/2013) (lmb) (Entered: 06/20/2013)
07/17/2013	<u>32</u>	STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE: IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiff Bickel & Brewer and the Defendant Executive Office for United States Attorneys that: The above-captioned action is dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) with each side to bear its own costs and attorneys' fees; The Plaintiff waives all rights to any costs or attorneys' fees related to this action, including, but not limited to, any costs or attorneys' fees that the Defendant had previously agreed to pay; The Defendant waives all rights to collect from the Plaintiff any fees or costs incurred by the Defendant in this action and/or in processing the Plaintiff's FOIA Request that is the subject of this action, including, but not limited to, search, copying, and review fees; and Facsimile or electronic signatures shall be deemed originals. The Clerk is directed to close this case. SO ORDERED. (Signed by Magistrate Judge Gabriel W. Gorenstein on 7/17/2013) (rsh) (Entered: 07/17/2013)